4066

BILL NO. S-78-05-32

SPECIAL ORDINANCE NO. S-85-78

AN ORDINANCE approving an Agreement with North Eastern Enterprises, Inc., for construction of a sanitary sewer.

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated May 8, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and North Eastern Enterprises, Inc., for:

Sanitary sewer to serve the area known as Hillsboro.

SANITARY SEWER

Commencing at a manhole 120' west of Miceli Drive and 16' North of the centerline of Rothman Road; thence east 1685' more or less and parallel to said centerline of Rothman Road and terminating at a manhole 40' east of and 40' north of the centerline intersection of Maplecrest Road and Rothman Road.

of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Paul R. Burns
Councilman

APPROVED AS TO FORM
AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the ~~City Plan Commission for recommendation~~) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ o'clock ____ M., E.S.T.

DATE: 5-23-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8	0		1	
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS				✓	
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 6-13-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (~~RESOLUTION~~) No. S-85-78 on the 13th day of June, 19 78

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of June, 19 78, at the hour of 11:00 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 20th day of June, 19 78, at the hour of 8:30 o'clock A M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-05-32

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with North Eastern Enterprises, Inc., for construction of a sanitary sewer

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance do PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

6-13-78

DATE

CONCURRED IN

CHARLES W. WESTERMAN, CITY CLERK

66-2-8 5/8/78

AGREEMENT

FOR

SEWER EXTENSION

THIS AGREEMENT, made in triplicate this 8 day of May, 1978, by and between North Eastern Enterprises, Inc., hereinafter referred to as "Developer", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City",

WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer, hereinafter referred to as "Sewer", and is more particularly described as follows:

Commencing at a manhole 120' west of Miceli Drive and 16' North of the centerline of Rothman Road; thence east 1685' more or less and parallel to said centerline of Rothman Road and terminating at a manhole 40' east of and 40' north of the centerline intersection of Maplecrest Road and Rothman Road.

Said Sewer shall be 15 inches in diameter and constructed in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the office of the Chief Engineer of the Water Pollution Control Utilities of the City, and known as Hillsboro Sanitary Sewer Main #1; Sta. 0+14 to Sta. 17+00 which plans, specifications and profiles are by reference incorporated herein and made a part of this Agreement. The said Sewer will serve not only land in which the Developer has an interest, but also adjoining land areas, and

WHEREAS, the total cost of construction of said Sewer is represented to be $67,000.00 composed of $33,701.00 for oversizing construction cost at the request of the City; and $33,299.00 for "local" construction cost to satisfy the Developer's needs, and

WHEREAS, the Developer desires the City to extend its existing sanitary sewer system to transmit the sewage from said Sewer to the City's Water Pollution Control Treatment Plant, and

WHEREAS, the Developer desires to have an operational sanitary sewer system to serve the area of the Developer on or before March 1, 1978, and

WHEREAS, the Developer recognizes that a portion of the area of the Developer is subject to certain area connection charges established on Sept. 26, 1974, by the City under Resolution No. 61-140-11, and

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

I. CONSTRUCTION OF SEWER:

The Developer shall cause said Sewer to be constructed and located in accordance with said plans, specifications and profiles, all approved by the City under private contract to be let within sixty (60) days after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be noncompliance therewith. Said Sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said Sewer shall become the property of City and City shall accept sewage therefrom, subject to such monthly sewage treatment fees, inspection fees, adopted area charge fees, and permit tap-in fees, as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

II. COST OF CONSTRUCTION:

The Developer agrees to pay the total cost of construction for said Sewer which has been determined by competitive bids. The oversizing construction cost shall be assigned a credit against the area connection charges for the "Area of the Developer" hereinafter described and shall be assigned against an area outside the "Area of the Developer" by the City.

III. AREA OF DEVELOPER:

The said Sewer when constructed and accepted by the City will serve the "Area of the Developer" as shown on Exhibit "A" being 330 acres more or less. As the Developer will pay for the total cost of construction of said Sewer, no charge or assessment is made by this Agreement against the "Area of the Developer" for the construction of said Sewer by either the present or future owners of the "Area of the Developer" EXCEPT those which are hereby established by this Agreement and such standard fees as permit tap-in fees, inspection fees, and monthly sewage treatment fees which are customarily and normally charged by the City for any connections into use thereof for the City's sanitary sewer mains and the treatment of sewage therefrom.

IV. AREA CONNECTION CHARGES:

The area connection charges established by the City under Resolution No. 61-140-11 on September 26, 1974, are hereby made applicable for the total "Area of the Developer" as shown on Exhibit "A" but shall not specifically exceed an amount equal to $160,000.00, which thereby represents a charge per acre of $484.85. This charge by the City shall be due and payable at the time a Sewer Construction Permit is issued to the Developer by the City for each respective platting within the "Area of the Developer". Since the Developer desires to receive a credit in the amount of the oversizing construction cost ($33,701.00) of said sewer toward these established charges, the first 69.51 acres with the "Area of the Developer" shall be excluded from the charge of $484.85 per acre.

V. CONTRIBUTION FOR EXTENSION:

The Developer agrees to contribute the amount of $190,000.00 to the City toward the construction of the required extension of the City's sanitary sewer system to transmit the sewage from said Sewer. The payments of this contribution to the City shall be as follows:

a) The first 25% at the time the contract for the construction of the extension is approved by the Common Council of the City of Fort Wayne.

b) A second 25% at the time the project is 50% completed by the contractor.

c) The balance at the time the extension is placed into operation to transmit sewage from said Sewer.

VI. CONDITIONS ON CONTRIBUTION:

A. Should the City elect not to proceed with the construction of the required extension of the City's sanitary sewer system, the Developer may elect to construct, at his sole expense, a sanitary sewer system adequate enough to accommodate the sewage from the "Area of the Developer" only. In such instances, the City shall not object to the required construction providing the Developer shall first enter into an Agreement with the City for the operation and maintenance cost of any lift station and force main that he may construct.

B. Should the City elect to proceed with the construction of the required extension of the City's sanitary sewer system, the City shall, after April 15, 1978, be totally responsible to remove and dispose of the sewage from said Sewer in whatever acceptable manner is applicable. Furthermore, the City shall, after the aforesaid date, continually execute the removal and disposal of the sewage from said Sewer in such manner to assure the Developer that neither building nor occupancy permits will be withheld within the "Area of the Developer".

VII. BOND:

This Agreement is subject to Developer furnishing a satisfactory ~~Performance and Guaranty~~ Maintenance Bond for the value of the Sewer which shall guarantee said Sewer against defects for a period of one (1) year from the date of final acceptance of said Sewer by the City.

VIII. LIMITATION ON USE:

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owners of any land serviced by said Sewer, shall at any time discharge or permit to be discharged or to flow into said Sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

X. WAIVER OR RIGHT TO REMONSTRATE AGAINST ANNEXATION:

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate

against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof, pursuant to Burns Ind. Statutes Ann. I.C.19-2-7-16,17, and 18.

In further consideration and to induce City to execute and ratify this Agreement, said Developer, for himself, his successors and assigns, agrees by this Agreement to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the "Area of the Developer" shown on Exhibit "A".

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns transferring or conveying any interest in and to any of the "Area of the Developer" as shown on Exhibit "A" herein, shall contain the waiver and release provisions contained in this Article, which provisions shall run with the land and the acceptance of the delivery of any such instruments from the Developer his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this Agreement in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of the City of Fort Wayne as hereinafter provided.

Any owner or owners of land which are now or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by the City of such land or of the territory in which it is located or of the area served by said Sewer.

X. GOVERNING STATUTE:

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Section 16,17,and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana I.C.19-2-8-16; 19-2-7-17 and 19-2-7-18, the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

XI. COUNCILMANIC APPROVAL:

It is understood and agreed that this Agreement is in all respects subject to approval by the Common Council of the City of Fort Wayne, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this Agreement shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

NORTH EASTERN ENTERPRISES, INC.

BY: _____
DAVID L. ZEHR

ATTESTED BY:

_____

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared David L. Zehr and Arlene K. Duncan who acknowledged the execution of the foregoing Agreement, as and for their voluntary act and deed, for the uses and purposes therein contained.

WITNESS my hand and notarial seal this 8th day of May, 1978.

_____
Notary Public
Resident of Allen County

My Commission expires:

3-3-80

CITY OF FORT WAYNE

BY: _____
Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

BY: _____
Henry F. Wehrenberg, Chairman

BY: _____
Ethel L. LaMar, Member

BY: _____
Max G Scott, Member

ATTESTED BY:

_____
Ursula Miller, Clerk

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 8 day of May, 1978, personally appeared the within named ROBERT E. ARMSTRONG, MAYOR: HENRY P. WEHRENBERG, CHAIRMAN, ETHEL H. LAMAR AND MAX G SCOTT, MEMBERS, of the Board of Public Works, City of Fort Wayne, Indiana, and Ursula Miller, Clerk of the Board of Public Works, to me personally known, who being by me duly sworn, said that they are respectively the members and clerk of the Board of Public Works of the City of Fort Wayne, Indiana and acknowledged said Agreement to be their voluntary act and deed of said department of said City for the uses and purposes therein set forth.

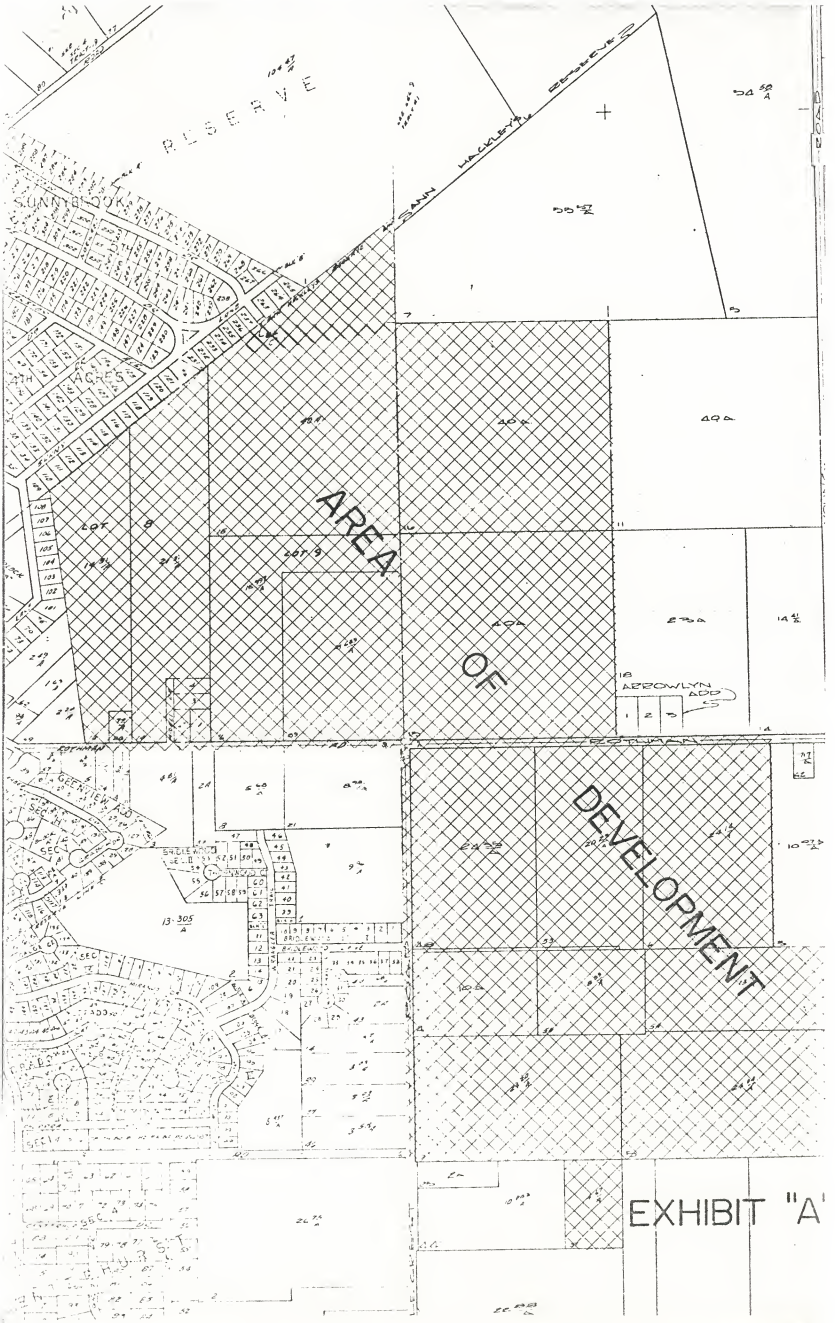
IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Anne J. Fox
Notary Public
Resident of Allen County

My Commission Expires:
3/6/80

Approved as to Form and Legality:
Jerry J. Buskirk
Associate City Attorney

This document prepared by Philip R. Boller, P.E.


AREA OF DEVELOPMENT
EXHIBIT "A"

4066

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXTENSION - MICELI DRIVE, MAPLECREST ROAD & ROTHMAN ROAD (AREA KNOWN AS HILLSBORO)

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS 4-78-05-32

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION - MICELI DRIVE, MAPLECREST ROAD AND ROTHMAN ROAD, NORTH EASTERN ENTERPRISES, INC., DEVELOPER, FOR THE CONSTRUCTION OF A SANITARY SEWER TO SERVE THE AREA KNOWN AS HILLSBORO.

(AGREEMENT FOR SEWER EXTENSION ATTACHED)

EFFECT OF PASSAGE CONSTRUCTION OF A SANITARY SEWER TO SERVE HILLSBORO AREA, ABOVE-DESCRIBED

EFFECT OF NON-PASSAGE INABILITY TO PROCEED WITH DEVELOPMENT OF AREA

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) DEVELOPER AGREES TO PAY TOTAL COST OF CONSTRUCTION FOR SAID SEWER. OVERSIZING CONSTRUCTION COST SHALL BE ASSIGNED A CREDIT AGAINST THE AREA CONNECTION CHARGES FOR THE "AREA OF DEVELOPER" AND SHALL BE ASSIGNED AGAINST AN AREA OUTSIDE "AREA OF DEVELOPER" BY THE CITY. TOTAL COST OF CONSTRUCTION REPRESENTED TO BE $67,000. COMPOSED OF $33,701.00 FOR OVERSIZING CONSTRUCTION COST AT REQUEST OF CITY AND $33,299. FOR "LOCAL" CONSTRUCTION COST TO SATISFY DEVELOPER'S NEEDS.

***

ASSIGNED TO COMMITTEE

***

EP

Carl Heller